IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 474

LEVON A. AKOPIANTZ, *Petitioner*

v.

BOARD OF MEDICAL EXAMINERS OF THE STATE OF CALIFORNIA, *Respondent*

BRIEF IN REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

I

At page 7 of its Brief, Petitioner adverts to its resolution adopted October 19, 1939, and carrying therein the recommendation of its College Investigation "that it be the policy of this Board [Respondent] that any application for a California medical license

based upon medical credits from these extramural schools of Great Britain, be denied". Then at page 8 Respondent quotes its resolution adopted August 8, 1946, disapproving extramural schools in Scotland "as of this date".

It will be recalled that on November 16, 1945, Respondent issued its reciprocity certificate to one Howard Golden, and that on May 7, 1946, it issued its reciprocity certificate to one Leonard S. Lazaroff.

Similarity of scholastic background and training of these licensees, and of Petitioner, appears from the following:

Petitioner attended St. Mungo's College of Medicine, and Anderson College of Medicine, from October 1, 1936 to June 30, 1938; Golden from October 1936 through 1939; Lazaroff from October 1937 through June 1939. (Petition, 3, 14, 15)

Petitioner attended Cambridge University from October 1, 1938 to June 1939. (Petition, 4)

Petitioner attended the University of Lausanne from March 1940 to June 1941, receiving the Degree of Doctor of Medicine therefrom on June 27, 1941. (Petition, 4) Golden was graduated therefrom on March 24, 1941 (Petition, 14), and Lazaroff was graduated therefrom after attendance March 18, 1940 to February 18, 1941 (Petition, 15).

After written examination in each instance, Petitioner was licensed in the State of New York on July 1, 1949 (Petition, 6), Golden on April 15, 1942 (Petition, 14), and Lazaroff on September 8, 1944 (Petition, 15).

II

Respondent at its page 26 attempts to justify its reciprocity licensings of Golden and Lazaroff, and its denial of such licensing to Petitioner, on the ground that the licensings of Golden and Lazaroff took place "prior to the reaffirmation of the disapproval of the extramural schools on August 8, 1946", and that an administrative agency is free to re-examine its policies. In other words, Respondent contends that while it may have deemed the extramural schools as approved for the period prior to October 1939, and admitted Golden on November 16, 1945 and Lazaroff on May 7, 1946, on that basis, it nevertheless had the right, on no new evidence or information-whatsoever, to reverse its stand shortly after licensing Lazaroff and thereafter to deny licensing to Petitioner whose medical scholastic background is similar to Golden's and Lazaroff's, and professional background superior to theirs. (Petition, 4-6)

Respondent's such action, taken under the cited California Statutes, was arbitrary, and a denial of due process and constitutional rights to Petitioner.

A medical licensing board is without power, in the absence of new evidence, to revoke a prior ruling approving a school. *Schleifer* v. *Department of Registration and Education*, 326 Ill. App. 259, 61 N.E. 2d 398.

Licensing board may not, without cause, revoke a prior *de facto* approval of a school. *State of Montana ex rel. Westercamp, Relator and Respondent* v. *Board of Chiropractic Examiners of the State of Montana*, 352 P. 2d 995 (1960).

Where orders which relate to what may rather broadly be termed individual rights are concerned . . .

the determination of an administrative agency as to the existence of a fact or status which is based upon a present or past group of facts may not thereafter be altered or modified. *Olive Proration, etc.* v. *Agricultural etc. Com.*, 17 Cal. 2d 204, 209, 109 P. 2d 918.

III

The official acts of Respondent are subject to judicial notice. *California Code of Civil Procedure*, Section 1875.

Respondent's official records show that in March 1960, and while this cause was on appeal below, Respondent admitted to examination one Morton Shapiro who, as those records also show, had obtained all of his medical education in the same extramural schools in Scotland which Petitioner attended. Apparently Respondent seeks to justify such admission on the theory that it deemed such schools as approved for the period prior to October 1939. The vice in the situation, and the invidious discrimination between persons in similar circumstances, material to their rights, within the condemnation of *Yick Wo* v. *Hopkins*, 118 U.S. 356, is that Respondent directly or inferentially used such basis of approval in dealing with and granting the applications of Golden, Lazaroff, Shapiro, and others, but that in acting upon Petitioner's application, it made the contrasting finding that the schools were "unapproved" in that period, and denied the application on that basis.

Respondent does not dispute, as asserted in the Petition, that the subject matter hereof is important and of national significance, because of the large numbers of foreign medical school graduates, American citizens, returning to their homeland each year, with expecta-

tion and desire to enter into the practice of their profession. The inadequate number of medical schools in the United States, and the resulting shortage of physicians, naturally incline many young Americans to acquire medical education and training abroad, and if they attend and graduate from reputable and competent schools, many of which exist in Europe, they are entitled to the same consideration accorded graduates of American and Canadian schools in admission to the practice of their profession.

Wherefore the Petition for Certiorari should be granted.

Respectfully submitted,

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